STATE OF MICHIGAN

COURT OF APPEALS

JACQUELYN MARIE FELTY,

Plaintiff-Appellant/
Cross-Appellee,

v

JOHN LEE FELTY,

Defendant-Appellee/
Cross-Appellant.

UNPUBLISHED
October 7, 1997

No. 197956
Kent Circuit Court
LC No. 93-79137-DM

Before: O'Connell, P.J., and MacKenzie and Gage, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals as of right and defendant cross-appeals the division of property, order of alimony, and order of child support awarded by the circuit court incident to a judgment of divorce. We affirm.

The parties were married in 1965 and divorced in 1996. At the time of the divorce, the value of the marital estate, disregarding personal items and vehicles the division of which neither party contests on appeal, was something more than $193,000, with the uncertainty resulting from the difficulty in valuing defendant's business. Of the amount in issue, plaintiff was awarded approximately $111,500 and defendant was awarded approximately $81,500. Defendant was also ordered to perform certain repairs on the marital home, which was awarded to plaintiff, and was obligated to pay plaintiff alimony in the amount of $100 per week for five years. The court also ordered defendant to pay child support. Each now contends that the division was inequitable in light of the particular circumstances surrounding the case.

The goal in distributing marital assets in a divorce proceeding is to reach an equitable, though not necessarily equal, distribution of property in light of all the circumstances. *Ackerman v Ackerman*, 163 Mich App 796, 807; 414 NW2d 919 (1987). The trial court is given broad discretion in fashioning its ruling, is held to no strict mathematical formula, and is only required to consider the factors relevant to the case before it. *Sparks v Sparks*, 440 Mich 141, 158-159; 485 NW2d 893 (1992).

To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 88-89; 545 NW2d 357 (1996); *Sparks, supra* at 158-160. In reviewing the trial court's award of property, we must decide whether the dispositional ruling was fair and equitable in light of the findings of fact. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995). The dispositional ruling is discretionary and we will affirm it unless left with the firm conviction that the division was inequitable. *Id.*

In the present case, we conclude that the circuit court committed no abuse of discretion in its division of the marital estate. While the division of property favored plaintiff, this deviation from equal apportionment of the marital estate is supported by plaintiff's limited earning capacity in light of her back injury and the fact that the court found defendant to be at fault. Further, we are not altogether certain that the discrepancy between the amounts awarded the parties is as great as it may appear at first glance. While defendant's business, which he was awarded, was unprofitable for income tax purposes, this unprofitable business apparently spun off a great deal of income which found its way to the parties while they were married. There is no reason to expect that this inexplicable pattern will not continue to inure to defendant's benefit in the future. In light of these facts, we are not left with a firm conviction that the division of property and award of alimony were inequitable. *Id*.

Both parties also challenge the amount awarded by the court as alimony in favor of plaintiff. In light of the discussion of defendant's business set forth in the preceding paragraph, we find no clear error with respect to the circuit court's determination of the facts underlying its award of alimony, *Beason v Beason*, 435 Mich 791, 804-805; 460 NW2d 207 (1990), and find no abuse of discretion with respect to the amount awarded. *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). For similar reasons, we find no error with respect to the court's award of child support. However, we would note that plaintiff's reliance on *Jacobs v Jacobs*, 118 Mich App 16,21; 324 NW2d 519 (1982), for the proposition that the court was required to hold a separate evidentiary hearing on the issue of child support is misplaced where here, unlike in *Jacobs*, the parties devoted a full day of testimony to this issue and introduced numerous exhibits below.

Finally, defendant contends that the court erred in considering his fault in the deterioration of the marriage when dividing the marital estate. He argues that the parties had stipulated that fault was not an issue. While defendant submits that "there will often be an understanding reached between the attorneys and the trial judge as to which issues will be addressed and which will not," we would note that parties often memorialize such "understandings" in writing so as to render them enforceable. There exists no record of such a stipulation, and defense counsel's references to the issue of fault at the hearing below are ambiguous, at best.

Affirmed.

/s/ Peter D. O'Connell
/s/ Barbara B. MacKenzie
/s/ Hilda R. Gage